



April 13, 2006

Elizabeth Brown  
Davis, Bowen & Friedel  
23 North Walnut Street  
Milford, DE 19963

RE: PLUS review – PLUS 2006-03-08; Town of Cheswold Comprehensive Plan  
Amendment

Dear Ms. Brown:

Thank you for meeting with State agency planners on March 22, 2006 to discuss the proposed Town of Cheswold comprehensive plan amendment.

According to the information received, you are proposing an amendment to your 2003 comprehensive plan to enlarge your existing annexation area and to participate in locating a school site for the Capital School District.

Please note that additional changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting.

The following are a complete list of comments received by State agencies:

**Office of State Planning Coordination – Contact: David Edgell 739-3090**

***Certification Comments:*** These comments must be addressed in order for our office to consider the plan amendment consistent with the terms of your certification and the requirements of Title 22, § 702 of the Del. Code.

1. The annexation plan map must show all annexation parcels, including parcels currently approved in the certified 2003 plan. It is assumed that these still are a part of the annexation plan.
2. The annexation plan should have some discussion regarding the timing and phasing of town infrastructure and services to meet the needs of new residents in the annexation areas. New territory and development projects will bring new residents and businesses, new tax revenue, and additional demands for municipal services. It is understood that the primary town service is local police at this time. How will the town phase in additional police resources to accommodate the new development? What future town services are anticipated? During what timeframe? How will the town work with other jurisdictions and utility providers to provide services needed for new residents and businesses (i.e. trash service; water utilities, etc.)? Working through some of these issues now through the comprehensive planning process will assist the town in preparing Plans of Services for future annexations.
3. The Town must demonstrate that both Kent County and the City of Dover have been informed of this planning process, and have been coordinated with to the extent that is practical for the town. The plan must also document public participation efforts that have been undertaken, and note any response to concerns raised by the public. The current draft does not include any indication that the plan has been presented to the public or the other jurisdictions.
4. Please prepare and submit an annual report for our records prior to plan certification. Although annual reports are required by Del.C., we have not received an annual report from Cheswold for 2005. The last report we received was dated December 2004. A suggested format for the annual report is attached. The annual report is due on the anniversary of Plan Certification each year.
5. The annexation plan should avoid the creation of enclaves. Our office will only consider an annexation plan for certification that does not include enclave areas. The current plan shows numerous single parcel enclave areas both along Lynnberry Woods Road to the west, and along McKee Road to the south in front of the Noble Pond property. If the larger parcels are ultimately included in the

annexation plan, then these strip lots and other parcels should be included as well to avoid the creation of enclaves.

6. Our office is concerned about the potential impact the annexation plan amendment will have on the airport property and the pending expansion project. The plan must be amended to include a chapter on the airport, including the intended expansion. The Town must consult and coordinate with DelDOT and DRBC to get their views on the plan amendment. We will require some correspondence from them as evidence that they concur with the town's annexation amendment.
7. Similarly, the airport area is shown as an enclave. During the process of preparing the last plan, DelDOT expressed a desire for the airport to remain within the County jurisdiction. Has their position changed? Please discuss this with them and address this in the context of the airport discussion within the plan. This section of the plan should also include DelDOT's recommended "Runway Protection Zone" (see DelDOT comments, below).
8. The Plan should have a chapter describing the coordination with the Capital School District, and detailing their need for new school facilities in the Cheswold Area. The current text is very vague. Our office supports the collaboration between the town and the Capital School District which could result in pre-planning of school facilities for the growing community.
9. One large parcel to the South of the Town has been approved as the "Villages of Noble Pond" development in Kent County's jurisdiction. What are the town's goals regarding annexation of an already approved development? How will annexation into the town benefit this development? The future residents? Will there be any changes needed to the approved subdivision plan, or the conditions of approval. This is a substantial land development that is larger than the town is now. These concerns warrant discussion in the plan text.

**Recommendations:** Our office strongly recommends that the Town consider these recommendations as you revise your plan.

1. It is recommended that all annexation parcels be designated with a future land use. It is not recommended that the town use the "existing" or "existing use" designation. This terminology is frequently used in DBF plans, and has proven to be problematic in other towns. Similarly, it is strongly suggested that the Town reconsider the use of the "public and preserved lands" designation. Such a designation should only be used if the parcels been preserved via public or private

ownership, and are currently protected with appropriate legal documents. If it is the desire to preserve natural features and concentrate parks and open spaces in these areas, we suggest an overlay or a separate map that clearly identifies the intentions of the town. It is, of course, appropriate to more fully describe the land use categories within the plan text.

2. The areas proposed for annexation into the town are designated Secondary Receiving Areas by the Kent County Transfer of Development Rights Ordinance. Our office strongly recommends the inclusion of Transfer of Development Rights provisions into the town's plan and ordinances, and the use of TDR credits when developing these parcels. We are available to assist the town in any way possible with the implementation of TDRs.
3. It is recommended that the Town work with the Kent County Department of Planning Services on a TDR ordinance that works in conjunction with Kent County's program.

***Other Comments:***

1. Please thoroughly review the document for spelling and grammar errors before submitting the final copy for review.
2. One of the commercial parcels South of the Town along Route 13 is currently being considered for an industrial park under Kent County's jurisdiction. We are reviewing it as Kriss Industrial Park, PLUS 2006-03-01.

**Division of Historic and Cultural Affairs – Contact: Alice Guerrant 739-5685**

The Division of Historic and Cultural Affairs has no objections to the proposed annexation area, although they do think it should be more compact and address the area along Rt. 42. They recommend that the Town of Cheswold consider the historic character and significance of the buildings and the archaeological sites that will be annexed into the town in the future, and that they provide a mechanism to protect such properties. We would be happy to discuss the various alternatives that are available for the town's use.

**Department of Transportation – Contact: Bill Brockenbrough 760-2109**

1. The proposed amendment states, under Transportation Planning, that "The goals of inclusion into a public transit network and better provision for heavy vehicle traffic remain." However, it is vague as to how those goals are to be achieved,

saying only that “as Cheswold’s population grows and matures the Town’s voice in regional transportation planning will likewise grow.” DelDOT applauds the Town’s intent to add sidewalks, interconnected neighborhoods and retail areas that allow residents to limit trips, choose transportation alternatives and to live near their work. They understand from the presentation at the PLUS meeting that the text in the amendment is a supplement to the text in the 2003 Comprehensive Plan and is to be understood in that context. Consistent with that understanding, DelDOT recommends that appropriate sections of the 2003 Plan be referenced in the amendment.

- 2) Regarding the map portion of the amendment, DelDOT has significant concerns about the potential interaction of proposed development and the Delaware Air Park. As shown on the revised map, presented at the PLUS meeting, the land at the west end of the existing runway is no longer proposed for development, but other lands, farther west, still are. They are concerned that if the area between the runway and Delaware Route 42 is developed residentially those new residents may find the existing airport to be a nuisance and oppose any improvements that would increase its capacity.

Accordingly, DelDOT would like to work with the Town to define a Runway Protection Zone in which land uses would be restricted to those that would be compatible with the airport. They ask that the Town contact Mr. Michael Kirkpatrick, of our Statewide and Regional Planning Section, in this regard. He may be reached at (302) 760-2153.

With specific regard to the Possible School Location, the area marked on the map is large, and from our perspective some parts of it south of Route 42 may be desirable school sites. The part north of Route 42 is simply too close to the airport. At the PLUS meeting, it was said that specific parcels were under discussion, but that they could not be identified because of on-going negotiations. When DelDOT is informed of the specific parcels under consideration they will be able to comment specifically.

- 3) Again regarding the map portion of the amendment, DelDOT notes that numerous smaller parcels along the south side of Lynnbury Woods Road (Kent Road 152), the west side of Commerce Street (Kent Road 156), both sides of Main Street (Delaware Route 42), and elsewhere appear to have been omitted from the future Town Boundary. Indeed, that line is missing from the map. DelDOT recommends that the Town reconsider its approach to future growth areas to include existing residential and developable parcels to create a complete and

logical boundary. Doing so will assist in providing public services and law enforcement more efficiently and easily.

DelDOT urges the Town to plan for the annexation of the smaller properties as well. Not doing so would leave the Town with boundaries that would be difficult to follow and would leave the new portions to the south and west largely unattached from the rest of the Town.

**The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-9071**

**Drainage**

After review of the amendment to the Town of Cheswold 2003 Comprehensive Plan (PLUS 2006-03-08), the Drainage Program, Division of Soil and Water Conservation, has the following comments. For questions or clarifications, please contact Jim Sullivan at 739-9921.

The Drainage Program is aware of existing drainage concerns on several of the proposed annexation parcels to the south and west of town.

On the submitted comprehensive plan map, the area to the west of the existing Delaware Airpark runway is shown as proposed residential. In addition to drainage concerns in the area, residential development does not seem appropriate at the end of a runway.

The proposed annexation area to the south, the subdivision of Village of Noble's Pond, has drainage concerns. The eastern portion provides the drainage outlet for McKee Road.

There are several locations where the Village of Noble's Pond subdivision has proposed stormwater pipes between lots with 5-foot side yard setbacks. Would the town of Cheswold be responsible for the reconstruction of stormwater pipes within a 10-foot space with a building on each side?

The area designated as a possible school location is an area of existing drainage concerns. As plans progress on a school site, please contact the Drainage Program to review drainage improvement projects in the area.

The Drainage Program recommends the following items addressed in the Town of Cheswold Land Use Ordinance. These items will

- The Drainage Program requests that all storm drains and catch basins within the annexation area be on open space or within street right-of-ways. However, the

Drainage Program recognizes the need for catch basins in rear and side yards in certain cases. Therefore, catch basins placed in rear and side yards will need to be clear of obstructions and be accessible for maintenance. Decks, sheds, fences, and kennels can hinder drainage patterns as well as future maintenance to the storm drain or catch basin. Deed restrictions, building setback lines, along with drainage easements recorded on deeds, should ensure adequate future maintenance access. Drainage easements and building setbacks for storm drains and catch basins should be 15 feet on each side of the pipe or catch basin.

- The Drainage Program recognizes the need for open swales in rear and side yards in certain cases. Swales placed in rear and side yards will need to be clear of obstructions and be accessible for maintenance. Decks, sheds, fences, and kennels can hinder drainage patterns as well as future maintenance to the swale. Deed restrictions, building setback lines, along with drainage easements recorded on deeds, should ensure adequate future maintenance access. Drainage easements and building setbacks should be 15 feet on each side of the swale as measured from the centerline or to the extent of the swale whichever is greater.
- Water bodies, ponds, intermittent and perennial streams, ditches should be buffered from development. Existing buffers could be enhanced or new buffers planted to obtain 100-foot buffers on each side of the existing water conveyance. A minimum 50-foot tree and shrub planting on buffers with the tallest trees planted on the south and west side of the water conveyance will maximize shading of water. Trees and shrubs should be native species, spaced to allow for mechanized drainage maintenance at maturity. Tree and shrub planting in this manner will provide a shading effect promoting water quality while allowing future drainage maintenance. Do not plant trees closer than 5 feet of the top of the bank to avoid future blockages from tree roots. Plant the balance of the 100-foot buffer, as well as stream and ditch banks, with herbaceous vegetation to aid in the reduction of sediment and nutrients entering into water conveyance. Grasses, forbs and sedges planted within these buffers should be native species, selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Remove invasive vegetation prior to the planting of native species. The construction of pedestrian and bicycle paths within the outer 50 foot of the buffer should be encouraged.
- Wetlands should be protected from development with a 50-foot vegetated buffer. Grasses, forbs and sedges planted within these buffers should be native species, selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Remove invasive vegetation prior to the planting of native species.

- Designate all buffers for water bodies, ponds, intermittent and perennial streams, ditches, and wetlands as un-subdivided open space. No portion of any building lot should be within the buffers.
- Designate all wetland buffers as un-subdivided open space. No portion of any building lot should be within the buffers. During prolonged wet periods, the wetland buffers may become too wet for normal residential use. Designation as open space will aid in the prevention of decks, sheds, fences, kennels, and backyards being placed within the buffers thereby reducing nuisance drainage complaints.
- Require vegetative buffers be designed by a Landscape Architect or Certified Nursery Professional and specify the native plants to be used in buffers and passive open space. The Kent County Coastal Zone Protection Overlay Ordinance has a listing of native plants. For additional information on native plants suitable for residential areas, contact the Delaware Natural Heritage Program.
- Existing woodland provides valuable wildlife habitat as well as soil erosion protection and water quality filtering. Preserve existing woodland within the proposed annexation. Do not allow the clearing of woodland to create stormwater management areas. Develop a tree planting guideline, a tree mitigation planting guideline and woodland preservation language to protect the existing woodland from harvest after annexation.
- For new subdivisions, the developer's engineer should check the existing downstream conveyance and pipes for function and blockages prior to the town's approval of plans and annexation. The developer should notify downstream landowners of any change in volume of water released on them. The examination of downstream conveyance and notification to downstream landowners should not stop at the town boundary.
- Evaluate the existing drainage patterns within the annexation area to ensure adequate drainage for the cumulative stormwater impact upon full build out of the proposed annexation. The town should be mindful of potential stormwater impacts from the town onto county residents.

### **Water Resource Protection Areas**

The DNREC Water Supply Section has determined that the proposed expansion of the town boundaries will include lands that fall wholly or partially within both wellhead



protection areas and an excellent ground-water recharge area. Wellhead protection areas are the surface and subsurface areas adjacent to public water supply wells within which contamination could, if released, travel to the well. Excellent ground-water recharge areas are the land surface areas within which precipitation infiltrates the land surface to the unconfined aquifer at a more rapid rate than other areas, generally due to the more sandy nature of the subsurface.

In 2001, the Governor signed the Source Water Protection legislation which required local governments with over 2000 residents to adopt the wellhead areas and recharge areas as critical areas in their comprehensive land use plans and also to adopt protection measures as deemed necessary by the local community. For those municipalities with less than 2000 residents, they are strongly encouraged to adopt protection measures. Measures could include, for instance, limits on impervious cover, prohibitions on storage of certain hazardous chemicals, etc.

The DNREC Water Supply Section recommends that the Town of Cheswold adopt these areas as critical areas and adopt measures to protect both the wellhead protection areas and the excellent ground-water recharge area. DNREC has developed a Source Water Protection Manual to assist the town in determining what aspects of protection they can consider. It is found at

<http://www.wr.udel.edu/swaphome/phase2/Publications/publications2.html>

The manual includes a reference to the SWP law and also provides examples of ordinances for Delaware as well as a “model” ordinance. Both DNREC and the Delaware Rural Water Association are available to assist the Town in the development of source water protection measures. The DNREC SWAPP can be contacted at 302-739-9945 and the Delaware Rural Water Association at 302-424-3792.

### **Total Maximum Daily Loads**

By December 2006, the Leipsic River will have a TMDL for oxygen consuming compounds, nutrients, and bacteria. The Town is in the Leipsic River watershed.

Under Section 4.4, Implementation, adding an ordinance to protect sensitive environmental features through the use of an overlay district would be a start to address the upcoming TMDL. The proposed overlay could contain all environmental features in town and future annexation areas. It should address Floodplains, Wetlands, Recreation Areas, Source Water Protection Areas, Slopes, Storm Water Management Areas, Public Spaces, Water Access, Potential Protected Areas, and any other lands with restricted development potential. A Storm Water Utility could also be explored.

### **General Planning Recommendation**

The existing gridiron street pattern should be extended to annexed lands to control the growth in costs from extending city services such as water and sewer and minimize the overall land disturbance and impacts from impervious areas.

### **State Fire Marshal's Office – Contact: John Rossiter 739-4394**

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. The DE State Fire Marshal's Office has the responsibility to review all commercial and residential subdivisions for compliance with the DE State Fire Prevention Regulations. This Agency asks that a MOU be established between the DE State Fire Marshal's Office and the Town of Cheswold if the Town is granting any kind of final approvals. The State Fire Marshal's Office would be issuing approvals much like DelDOT, Kent Conservation, and DNREC. This Agency's approvals are based on the DE State Fire Prevention Regulations only.

*The DE State Fire Marshal's Office has no objection to the annexation growth and boundaries. As was stated in the meeting it would be helpful if your map had all the existing growth areas along with new growth areas.*

### **Department of Agriculture - Contact: Milton Melendez 698-4500**

The Delaware Department of Agriculture has no objections to the Comprehensive Plan Amendment presented by the Town of Cheswold. The Department of Agriculture encourages municipalities to plan for future preservation, and explore measures to accommodate agricultural and forestry activities in the Cheswold area. Finally, it is the hope of the Department that the community will work to continue to improve upon this plan to address other issues such as the increasing residential growth adjacent to a regional airport facility and various industrial sites.

### **Public Service Commission - Contact: Andrea Maucher 739-4247**

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

### **Delaware State Housing Authority – Contact: Karen Horton 739-4263**

The Town of Cheswold is proposing an amendment to their 2003 Comprehensive Plan due to a rise in residential growth and commercial development. The Town is also responding to an opportunity to participate in locating a new school site for the Capital

School District. The proposed annexation area is to the west and to the south of the Town and is located with the State Strategies Investment Levels 1, 2 and/or 3. DSHA recognizes the Town of Cheswold for their existing housing stock, which could be considered affordable. However, the proposed amendments will more than double the size of the Town, which will change the demographics significantly. DSHA encourages the Town of Cheswold to continue planning for all income ranges even in their proposed annexed areas. We recommend that the Town considers zoning the annexed areas at a higher overall density where possible, to permit a variety of housing types. This will better reflect the existing character of the community and meet the housing needs for the community's low- and moderate-income households.

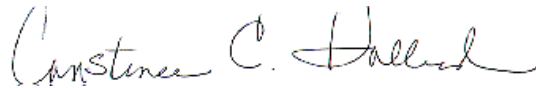
**Department of Education – Contact: John Marinucci 739-4658**

The Department of Education is encouraged by the consideration of a potential school site associated with the annexation agreement. Prior to the approval of an annexation agreement which includes a potential school site, all school sites must be approved by the Department of Education, The State Budget Office and the Office of State Planning Coordination in accordance Title 29, section 7525, Delaware Code.

The Town should provide to the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the amendment or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance C. Holland, AICP  
Director

CC: Town of Cheswold  
Kent County